



STATE BOARD OF EQUALIZATION

(916) 445-5550

November 7, 1990

Dear: ---

This is in response to your letter dated October 10, 1990. You recently purchased a vehicle from one person and leased it to her husband. When you tried to register the vehicle with your name as lessor and the husband's name as lessee, the Department of Motor Vehicles stated that the husband is not supposed to be charged sales tax on this transaction. You ask whether your client is exempt from paying sales tax on the lease transaction.

As you know, if you pay sales tax reimbursement to your vendor when purchasing an automobile or timely pay use tax measured by purchase price, your lease of the automobile is not a sale and use tax does not apply to the rental receipts. However, if you do not pay sales tax reimbursement to your vendor or timely pay use tax measured by purchase price, your lease of an automobile is a sale and your lessee owes use tax measured by the rentals payable. You must collect that use tax and pay it to the state. (See Reg. 1660, a copy of which is enclosed.)

Revenue and Taxation Code section 6285 exempts from sales and use tax the sale of an automobile when the seller is the spouse of the purchaser and the seller is not engaged in the business of selling automobiles. Thus, if the wife sold the car directly to the husband, the sale would be exempt from sales and use tax. However, that is not what happened. Rather, you purchased the vehicle from the wife and leased it to the husband. The sale of the vehicle from the wife to you is not exempt from sales or use tax under section 6285. Similarly, the lease from you to the husband is also not exempt from sales or use tax under section 6285. Since you acquired the vehicle in a transaction not exempt from sales or use tax and will lease the vehicle in a transaction that is not exempt from sales or use tax, you have the usual options available to you. If you make a timely election and report use tax measured by your purchase price of the vehicle, the rentals payable from your lease of that vehicle are not subject to use tax. Otherwise, you must collect use tax from your lessee measured by the rentals payable.

If you have further questions, feel free to write again.

David H. Levine
Senior Tax Counsel

Encl.

bc: San Mateo District Office